

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201506894	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 08/07/2015 5:30 AM	Location of Incident: § 87(2)(b) 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 2/7/2017	EO SOL 2/7/2017	
Date/Time CV Reported Mon, 08/17/2015 10:18 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/17/2015 11:25 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nelson Nin	15130	950955	040 PCT
2. SGT Brian Ramirez	01750	937327	040 PCT
3. Officers			
4. An officer			040 PCT
5. POM Jose Gordian	19453	932733	040 PCT
6. DTS Terry Avent	01029	932280	E S U

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Joaquin Morales	00000	921608	040 PCT
2. DTS Kristen Collins	4151	934669	ESS 09
3. POF Anaritza Gonzalez	23027	950513	040 PCT
4. SGT Michael Gargan	01154	906311	E S U
5. DTS Michael Cook	00772	915497	ESS 08
6. DT2 Dale Schultz	07354	899827	E S U
7. DTS Albert Romano	4279	940667	ESS 06
8. DTS John Rodriguez	4273	940656	ESS 03

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered and searched § 87(2)(b) in the Bronx.	
B. Officers	Discourtesy: At § 87(2)(b) in the Bronx, officers spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C.DTS Terry Avent	Force: Det. Terry Avent used physical force against § 87(2)(b) at § 87(2)(b) in the Bronx.	
D.POM Nelson Nin	Abuse: At § 87(2)(b) in the Bronx and at the 40th precinct stationhouse, PO Nelson Nin did not obtain medical treatment for § 87(2)(b)	
E.SGT Brian Ramirez	Abuse: At § 87(2)(b) in the Bronx and at the 40th precinct stationhouse, Sgt. Brian Ramirez did not obtain medical treatment for § 87(2)(b)	
F. An officer	Off. Language: At § 87(2)(b) in the Bronx, an officer made remarks to § 87(2)(b) based upon race.	
G. An officer	Abuse: At § 87(2)(b) in the Bronx, an officer threatened § 87(2)(b) with the use of force at § 87(2)(b) in the Bronx	
§ 87(4-b) § 87(2)(g)		

Case Summary

On August 7, 2015, § 87(2)(b) filed this complaint with IAB on behalf of his patient § 87(2)(b) § 87(2)(b) was § 87(2)(b)'s treating physician at the § 87(2)(b) § 87(2)(b).

On August 7, 2015, at approximately 5:30 a.m., officers entered and searched § 87(2)(b) in the Bronx (**Allegation A**). ESU and 40th Precinct SNEU Team officers were present during entry. § 87(2)(b) and § 87(2)(b) were all present during the incident. Upon walking into the apartment, the officers had their guns drawn and § 87(2)(b) heard the officers say, "Get the fuck down" (**Allegation B**). Det. Terry Avent subsequently dragged § 87(2)(b) off a couch and punched and kicked him numerous times before placing him in handcuffs (**Allegation C**). § 87(2)(b) repeatedly requested for medical attention and neither PO Nelson Nin nor Sgt. Brian Ramirez obtained medical attention upon his requests (**Allegation D and E**). § 87(2)(b) was then escorted out of his residence. Once outside, an officer told § 87(2)(b) "See what Dominicans do when they come to the country" (**Allegation F**). § 87(2)(b) continued to request medical attention and an officer responded, "Shut up before I smack you" (**Allegation G**). § 87(2)(b) and the other four individuals were all transported to the 40th Precinct stationhouse. At the 40th Precinct stationhouse, § 87(2)(b) continued to request for medical attention, but he was never provided with any (**subsumed within Allegation D and E**). § 87(2)(b) and § 87(2)(b)'s arrests were voided and they were subsequently released. § 87(2)(b) and § 87(2)(b) arrests were processed and they were sent to Bronx Central Booking. § 87(4-b) § 87(2)(g) § 87(2)(b)

After § 87(2)(b) was released, he sought medical attention at § 87(2)(b) and was later admitted at § 87(2)(b) (Board Review 43 and see Privileged Documents). He was diagnosed with pain to his shoulder joints.

This case exceeded 90 days because the undersigned investigator had to complete contact attempts to witnesses, waited for the receipt of necessary NYPD documents before interviewing various officers involved in this incident. The investigation obtained contact information for seven potential witnesses, some of which were obtained later through police documents. Contact attempts to these witnesses were completed on October 29, 2015 (See IAs). Furthermore, there were difficulties in obtaining all of the NYPD documents pertaining to the search warrant. At the beginning of the investigation, documents from the 40th Precinct were received 29 days after the request was submitted. Moreover, ESU documents were not received until 25 days after the request was submitted (See IAs).

Mediation, Civil and Criminal Histories

- This case was determined to be unsuitable for mediation because § 87(2)(b) and § 87(2)(b) were arrested and processed during this incident (Board Review 36).
- On February 4, 2016, the NYC Comptroller's Office indicated that neither § 87(2)(b) nor § 87(2)(b) filed a Notice of Claim (Board Review 26).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

2)

(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint § 87(2)(b) has filed (Board Review 24).
- § 87(2)(b) has no prior CCRB complaints (Board Review 25).
- Det. Avent has been a member of the NYPD for 12 years and has 17 prior CCRB allegations involving five cases; none of which were substantiated. Moreover there is one pending allegation pleaded against him in an ongoing CCRB case. None § 87(2)(g)
- Sgt. Ramirez has been a member of the NYPD for 11 years and has nine CCRB allegations pleaded against him in seven cases; none of which were substantiated. § 87(2)(g)
- PO Nin has been a member of the NYPD for four years and has 22 CCRB allegations pleaded against him in six cases. PO Nin has one substantiated allegation, in case #201214417, for refusal to provide name and shield number which the NYPD imposed that he received instructions. § 87(2)(g)
- PO Gordian has been a member of the NYPD for 12 years and has three prior CCRB allegations pleaded against him in three other cases; none of which were substantiated. § 87(2)(g)

Potential Issues

§ 87(2)(b) provided a brief phone statement to the CCRB, but was ultimately uncooperative with the investigation (Board Review 15). § 87(2)(b) failed to appear for her scheduled CCRB interview. To date, she did not contact the undersigned to reschedule despite contact attempts.

§ 87(2)(b) provided a phone statement to the CCRB, but he did not reiterate any of the allegations made by § 87(2)(b) nor did he introduce any new allegations (Board Review 14). Thus, it was determined that his testimony was not needed as he did not witness any of the aforementioned allegations aside from the entry.

To date, § 87(2)(b) has not contacted the undersigned investigator despite a total of five telephone contacts to two telephone numbers and two attempts to contact him via mail.

Various database searches revealed that § 87(2)(b) has no associated phone number and three letters were sent to § 87(2)(b). To date, § 87(2)(b) has not contacted the CCRB.

The 40th Precinct Prisoner Holding Pen Roster indicated that § 87(2)(b) and § 87(2)(b) were all present in the holding cell at around the same time as § 87(2)(b) (Board Review 18 and 41). The following reflects the contact attempts to each of the identified potential witnesses:

§ 87(2)(b) provided a brief phone statement to the CCRB, but was otherwise uncooperative with the investigation (Board Review 21). § 87(2)(b) was called five times and three letters were sent to his mailing address. To date, § 87(2)(b) has not contacted the CCRB to schedule an interview.

To date, the CCRB is unable to contact § 87(2)(b) because the investigation was unable to obtain sufficient contact information.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) was unable to describe the officer that punched and kicked him because he was positioned face-down on the ground and also because of the lack of lighting inside the apartment (Board Review 01). However, he stated that this officer was possibly the second officer to enter. Furthermore, § 87(2)(b) stated that this officer might have been a black male from the sound of his voice. The ESU Supplemental sheet indicated that Det. Avent handcuffed a § 87(2)(b) old male Hispanic (Board Review 40). The general description closely matched § 87(2)(b)'s attributes as he was the only § 87(2)(b) old male inside the apartment. Moreover, Det. Avent is a black male.

§ 87(2)(g)

§ 87(2)(b) alleged that as he was by the police van, an officer stated, "See what Dominicans do when they come to the country?" § 87(2)(b) described this officer, PO3, to be a Hispanic male, approximately 5'10" tall, with a medium build, with short black hair, and near his 40s. § 87(2)(b) also alleged that another officer that was by the police van told him, "Shut up before I smack you." § 87(2)(b) described another subject officer, PO6, to be a white male, approximately 5'3" – 5'4" tall, with a medium build, with short black hair, and was approximately 35 – 39 years old. § 87(2)(b) stated that the officers on the scene were constantly walking back and forth towards the van.

The investigation obtained the 40th Precinct Search Warrant Plan Pre-Execution Roster identifying the officers that would have been present during the execution of the search warrant (Board Review 42). There were eleven officers and two sergeants, two lieutenants, and one Deputy Inspector listed on the Roster. After reviewing the roster, most of the officers listed were Hispanic males. Since § 87(2)(b) was unable to provide further distinct descriptions of the two subject officers and a name or shield number for the officers, the potential pool of subject officers includes the whole SNEU Team and officers listed on the Roster.

Sgt. Ramirez, PO Gordian, PO Nin, and Lt. Joaquin Morales were all interviewed and none of the officers acknowledged stating offensive remarks towards § 87(2)(b) or threatening him with the use of force (Board Review 04-07). Furthermore, none of the aforementioned officers or PO Gonzalez heard any other officers doing so (Board Review 04-07 and 10).

During § 87(2)(b)'s CCRB testimony, he confirmed that he could possibly be able to identify the subject officers via a photo viewing. However, § 87(2)(b) failed to appear for his scheduled appointment for a photo viewing on December 9, 2015.

Moreover, during the IAB investigation, two photo arrays consisting a total of 12 officers were shown to § 87(2)(b) on August 7, 2015, but he did not definitively identify any of the officers from the array (Board Review 16 and 38).

§ 87(2)(g)

§ 87(2)(b) alleged that once she saw officers enter § 87(2)(b) she immediately got down on the ground (Board Review 15). She then heard officers say, "Get the fuck down." However, she could not describe which officer did so and since she was uncooperative with the investigation further details of this could not be obtained. § 87(2)(g)

Allegations not pleaded

Guns drawn and Property damage:

§ 87(2)(b) alleged that officers had their guns drawn upon entering § 87(2)(b) in the Bronx. Moreover, he stated that the officers damaged his bathroom walls during the search of his apartment. He did not witness the officers doing so, but stated that the officers broke a bedroom door by kicking it down and that his bathroom walls and pipes were also broken when he returned home. Because the officers entered and searched the location pursuant to a no-knock search warrant, both of these allegations were subsumed within the entry and search allegation.

Allegation A –Abuse of Authority: Officers entered and searched § 87(2)(b) in the Bronx.

§ 87(2)(g)

Search warrant § 87(2)(b) signed by the Honorable § 87(2)(b), was requested by PO Gordian and executed on August 7, 2015, for the location of § 87(2)(b) in the Bronx (Board Review 39, 42, 45, and 46). The search warrant authorized and directed the officers to search the location for narcotics. The date listed on the copy of the warrant was § 87(2)(b). However, the investigation received confirmation from the Bronx District Attorney's Office that this was just a typographical error on the part of the courts (Board Review 37).

Article 690.05 of the New York State Criminal Procedure Law explicitly states that a search warrant is a court order directing police to conduct a search of a designated premise for purposes of seizing designated property or kinds of property, and to deliver any property so obtained to the court which issued the warrant (Board Review 47).

§ 87(2)(g)

Allegation B –Force: Officers spoke discourteously towards § 87(2)(b)

As mentioned above, § 87(2)(b) was uncooperative with the investigation. Moreover, none of the officers interviewed acknowledged using any profanities during the incident and § 87(2)(b) did not reiterate this allegation. § 87(2)(g)

Allegation C –Force: Det. Terry Avent used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) provided multiple statements to IAB which were all generally consistent with his CCRB statement (Board Review 16 and 37). In § 87(2)(b)'s CCRB statement, he stated that he was lying on his couch when ESU officers entered his apartment (Board Review 01). A female officer, identified via the investigation as Det. Collins, told him to place his hands on his stomach. § 87(2)(b) complied. Without speaking, Det. Avent dragged § 87(2)(b) off of the couch. As § 87(2)(b) attempted to get up, Det. Avent tried to pick him up to slam him onto the ground, but he was unable to lift him completely from the ground. While § 87(2)(b) was on the floor, Det. Avent kicked § 87(2)(b) four or more times in the back, stomped on his ankles three or four times, and also stomped on his back. Det. Avent then punched § 87(2)(b)'s face numerous times. § 87(2)(b) also stated that Det. Avent repeatedly punched and kicked him for approximately one to two minutes before he was placed in handcuffs.

In § 87(2)(b)'s phone statement, he stated that he heard § 87(2)(b) ask the officers why they were stomping him (Board Review 14). Moreover, in § 87(2)(b)'s phone statement, she also heard § 87(2)(b) screaming, “Stop, stop” (Board Review 15). However, neither of the two witnessed what was occurring outside since they were in their own bedrooms.

Medical records received from § 87(2)(b) noted that § 87(2)(b) reported that he had pain in his shoulder area and was subsequently sent to § 87(2)(b) for further examination (Board Review 43 and see Privileged Documents). The medical records indicated that there were no deformities, swellings, open wounds, or fractures, and diagnosed him with pain to the shoulder joints.

The IAB case file was obtained and five photos of § 87(2)(b) taken at § 87(2)(b). However, only one photo showed abrasions/bruising to § 87(2)(b)'s lower back region (Board Review 32). The rest of the photos did not depict any injuries (Board Review 31, 33, 34, and 35). None of the officers interviewed stated that they saw any injuries on § 87(2)(b) or heard him complaining of any injuries during the incident (Board Review 04-13). Moreover, none of the ESU officers interviewed recalled seeing any resistance or struggle from the civilians at the location (Board Review 08-09 and 11-13). Det. Rodriguez was the only ESU officer that recognized § 87(2)(b) and stated that he recalled him sweating profusely while in handcuffs, but

did not have any further recollection (Board Review 12). Det. Avent did not have any independent recollection of this incident (Board Review 08). Even after reviewing the ESU Supplemental sheet and the photo of § 87(2)(b) Det. Avent did not recall handcuffing any civilians during this incident. Moreover, he denied using any physical force against § 87(2)(b)

The ESU Truck Report did not indicate any force was used against the civilians and indicated that none of the members of service or civilians were injured during this incident (Board Review 23 and 40).

An officer may use the minimum amount of force necessary to overcome resistant in order to effect an arrest, Patrol Guide Procedure 203-11 (Board Review 44).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation D –Abuse of Authority: At § 87(2)(b) in the Bronx, and at the 40th Precinct stationhouse, PO Nelson Nin did not obtain medical treatment for § 87(2)(b)
Allegation E –Abuse of Authority: At § 87(2)(b) in the Bronx, and at the 40th Precinct stationhouse, Sgt. Brian Ramirez did not obtain medical treatment for § 87(2)(b)
It is undisputed that § 87(2)(b) did not obtain medical treatment while in police custody.

§ 87(2)(b) alleged that he asked all of the officers on the scene of his arrest for medical attention and was repeatedly requested medical attention at the 40th Precinct stationhouse. § 87(2)(b) provided multiple statements to IAB in regards to log #15-22698, all of which were consistent with his CCRB testimony. § 87(2)(b) § 87(2)(b)'s treating physician from § 87(2)(b) § 87(2)(b), reported to IAB that § 87(2)(b) stated that he was punched, kicked, and stomped on by officers. Additionally, it was reported that § 87(2)(b) requested an ambulance at some point during the incident, but the officers refused to provide him with one (Board Review 38).

In § 87(2)(b)'s CCRB testimony, he stated that he repeatedly requested medical attention from the time that he was placed in handcuffs at his home to when he was inside the 40th Precinct stationhouse (Board Review 01). He stated that he verbalized this request to every officer he saw

at the arrest location, and that he screamed this request while inside the 40th Precinct stationhouse without directing the request to any specific officer. Nonetheless, § 87(2)(b) never received medical attention while in police custody, from 6:20 a.m. when he arrived at the stationhouse to 8:25 a.m. when he was released on a voided arrest.

§ 87(2)(b) heard § 87(2)(b) request medical attention from the officers while they were still at the scene of their arrest, but stated that the officers ignored his requests (Board Review 14). She did not hear § 87(2)(b) request medical attention at the stationhouse because she was placed in a separate holding cell. § 87(2)(b) was placed inside the same holding cell as § 87(2)(b) and he heard § 87(2)(b) loudly requested medical while inside the holding cell, but his requests were ignored by the offices (Board Review 15).

§ 87(2)(b) an eye witness who was also inside the holding cell with § 87(2)(b) stated that he recalled a Hispanic male in 60s inside the holding during the time of his arrest, a description that matches § 87(2)(b)'s general attributes (Board Review 21). § 87(2)(b) stated that the Hispanic male complained of injuries to his back, chest, or leg and requested to go to the hospital a few times. The officers told the Hispanic male that he already went to the hospital and the Hispanic male stated that he wanted to go back. It is unclear whether this Hispanic male was § 87(2)(b) and since § 87(2)(b) was uncooperative with the investigation, as discussed above, this could not be clarified.

Of all the ESU officers interviewed, only Det. Rodriguez recognized § 87(2)(b) (Board Review 08-09 and 11-13). However, none of the ESU officers interviewed heard § 87(2)(b) request for medical attention at any point.

All of the 40th Precinct SNEU Team officers interviewed by the CCRB denied hearing § 87(2)(b) request for medical attention at any point during the incident. PO Nin, § 87(2)(b)'s arresting officer, and Sgt. Ramirez, the SNEU Team supervisor, did not hear any civilian complain of injuries and denied seeing any visible injuries on § 87(2)(b). Sgt. Ramirez acknowledged that he logged all of the civilians in the command log, but stated that he did not see any visible injuries. Sgt. Ramirez also stated that none of the officers informed him that § 87(2)(b) had requested medical attention.

Furthermore, NYPD documents obtained did not indicate that § 87(2)(b) sustained any injuries or whether he requested medical attention and if he received or refused medical attention (Board Review 19, 28, 29, and 40).

Patrol Guide Procedure 210-04 requires that members of the service are to request an ambulance or remove the prisoner to the hospital directly when a prisoner in custody requires medical treatment (Board Review 27).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[Redacted text block]

§ 87(2)(g)
[Redacted text block]

Allegation F –Offensive Language: At § 87(2)(b) in the Bronx, an officer made remarks to § 87(2)(b) based upon race.

Allegation G – At § 87(2)(b) in the Bronx, an officer threatened § 87(2)(b) with the use of force.

As discussed above, the investigation was unable to identify the officers who allegedly made offensive remarks against § 87(2)(b) and also threatened him with the use of force § 87(2)(b)

§ 87(4-b) § 87(2)(g)
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[Redacted text block]

[Redacted text block]

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date